

# A T T O R N E Y S

HILLS CENTER BUSINESS PARK

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LAS VEGAS, NEVADA 89134

TEL (702) 252-5002 • FAX (702) 252-5006

## DAVID SCHMIDT,

Plaintiff,

V.

C.R. BARD, INC.; DAVOL INC.; AND  
JOHN DOE(S),

Defendants.

) Case No. 2:11-cv-00978-PMP-PAL

# PROTECTIVE AND CONFIDENTIALITY ORDER

It is hereby ORDERED and ADJUDGED, that:

1. This Protective and Confidentiality Order (“Protective Order”) shall govern confidential, proprietary and other protected information that may be disclosed during the course of *David Schmidt v. C.R. Bard, Inc. et al.* (“this Action”) by CR. Bard, Inc. (“Bard”) and Davol Inc., and the individually named plaintiff in this Action (“the Parties”).

2. For purposes of this Protective Order, any Party may designate as “Confidential Material” any information reasonably and in good faith believed to be suitable for protection under the Federal Rules of Civil Procedure or other applicable law that is contained in any document, written discovery response, testimony, or other material produced or provided by that Party or its representative(s) to one or more of the

1 other Parties, whether provided voluntarily, pursuant to formal discovery procedures, or  
2 otherwise.

3  
4 3. Any Party may designate a document as Confidential Material by  
5 stamping it "Confidential," "Subject to Protective Order" or a substantial equivalent of  
6 either of these legends. All pages of any document that bears such a legend are subject  
7 to this Protective Order.

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9 4. A Party may designate a document as Confidential Material after such  
10 document has been produced to another Party in the course of this Action by noticing  
11 each Party of the retroactive designation. Should any party challenge the designation,  
12 the parties will follow the procedure outlined in Paragraph 13.

13 5. If responses to interrogatories, requests for admission, or other written  
14 responses to discovery quote, summarize, or contain Confidential Material, the Parties  
15 may designate them as Confidential Material by marking the face of any such response  
16 with one of the legends set forth in paragraph (3) above and indicating the page and line  
17 references of the material that is to be subject to this Protective Order.

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19 6. The Parties may designate the transcript of any deposition in this Action or  
20 any portion thereof, including exhibits thereto, as Confidential Material by so advising  
21 the court reporter and the Parties on the record during the taking of the deposition. If all  
22 or any portion of a deposition is designated as being subject to this Protective Order, the  
23 court reporter and any Parties possessing any transcripts shall label the cover page of  
24 each transcript or copy thereof to state that the deposition includes Confidential  
25 Material, and shall label as confidential each of the pages of the transcript or exhibits  
26 that contain Confidential Material. Any such depositions or exhibits that are filed with  
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1 the Court shall be filed under seal, bearing substantially the following designation: "This  
 2 portion of the deposition of \_\_\_\_\_ is subject to the Protective Order of the Court in  
 3 *David Schmidt v. C.R. Bard, Inc., et al.*, United States District Court District of Nevada,  
 4 Case No. 2:11-cv-00978-PMP-PAL. This portion of the deposition shall remain sealed  
 5 until further Order of the Court."  
 6

7 7. Written and oral communications between or among counsel for the  
 8 Parties that quote from or describe or discuss the contents of Confidential Material  
 9 automatically shall be subject to this Protective Order.  
 10

11 8. The restrictions and obligations set forth herein shall not apply to  
 12 information that is at the time of production or disclosure, or subsequently becomes,  
 13 through no wrongful act on the part of the receiving Party, generally available to the  
 14 public through publication or otherwise.  
 15

16 9. Confidential Material shall be treated by the Parties and their counsel as  
 17 being confidential and private. Any copy made of Confidential Material shall have the  
 18 same status as the original. The disclosure and use of Confidential Material shall be  
 19 confined to the permissible disclosures and uses set forth below, and in no event shall a  
 20 Party make any disclosure or use of Confidential Material unless it is reasonably  
 21 necessary to effectively prosecute their respective claims and defenses in this Action.  
 22 All other disclosure and use of Confidential Material during the pendency of this Action  
 23 or after its termination is hereby prohibited.  
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25 10. Confidential Material may be disclosed only to the following persons and  
 26 only insofar as it is reasonably necessary to the effective prosecution of the Parties\*  
 27 claims and defenses:  
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1 a. Parties, their representatives, in-house counsel and regular  
2 employees who are actively engaged in, or actively overseeing this Action;

3 b. Counsel of record, their associated attorneys, and support staff;  
4 including paralegal and secretarial personnel;

5 c. Experts and consultants (including their employees) who are  
6 retained by a Party to assist in the litigation of this Action;

7 d. Third-party contractors and their employees who are retained by  
8 one or more Parties to provide litigation-support or copy services in connection with the  
9 litigation of this Action;

10 e. Witnesses or prospective witnesses in this Action;

11 f. Court reporters and other persons involved in recording deposition  
12 testimony in this Action;

13 g. Court personnel, the United States District Court District of  
14 Nevada, or, if on appeal, of a court with appellate jurisdiction; and

15 h. Jurors in this action.

16  
17 Counsel for each Party disclosing Confidential Material in accordance with this  
18 paragraph shall advise each person to whom such disclosure is made (except Court  
19 personnel and jurors) of the terms of this Protective Order and of the obligation of each  
20 such person to comply with those terms. Each Party retaining such experts and/or  
21 consultants will be responsible to ensure that they have read the terms of this Protective  
22 Order and have had an opportunity to ask about their obligations with those terms.  
23 Counsel shall require that each such person sign an agreement to be bound by the  
24 Protective Order, which is attached hereto as Exhibit A. Counsel shall maintain a list of  
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1 persons to whom confidential materials are disclosed (excluding jurors and Court  
2 personnel). The list of those designated experts who have signed onto this  
3 Confidentiality Order will not be provided to the opposing side until such time as the  
4 Court designates the expert disclosure deadline. Any non-disclosed consultants'  
5 protective orders will be kept by the respective retaining side's attorneys in observance  
6 of the attorney work product privilege and only with good cause shown and Court Order  
7 will this list be disclosed to the opposing side. Upon learning of any disclosure of  
8 Confidential Material to any person not authorized by this paragraph to receive  
9 Confidential Material, the Party who so learns shall immediately (i) inform in writing  
10 the Party from which the Confidential Material was originally received of such  
11 disclosure, including to whom the material was disclosed, and (ii) take all necessary  
12 steps to retrieve as soon as possible each and every copy of all Confidential Material  
13 from the unauthorized person and any person to whom the unauthorized person  
14 disclosed the Confidential Material.

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17 11. Each Party agrees that in the event it is served by a non-party with a  
18 subpoena or request for production of Confidential Material originally received from  
19 another Party, it will give sufficient notice to allow that Party a reasonable opportunity  
20 to intervene to oppose such production. Any person to whom confidential materials are  
21 provided under Paragraph 9, except for court personnel or jurors, shall also be bound by  
22 this term.

23  
24 12. Disclosure of Confidential Material in accordance with paragraph (9)  
25 above shall not effect, nor shall it be deemed to effect, a waiver of the attorney-client  
26 privilege, the work-product immunity, or any other privilege or immunity from  
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1 disclosure to which such Confidential Material may be entitled, whether in this Action  
 2 among the Parties herein or in any other action or as to any non-party. Should any party  
 3 challenge the assertion of privilege, the parties will follow the procedure outlined in  
 4 Paragraph 13.

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 6 13. Should any Party to whom Confidential Material is disclosed object to the  
 7 designation of that material as proprietary, confidential, or otherwise protected, it shall  
 8 make a good-faith effort to resolve the dispute informally with the disclosing Party.  
 9 Except where good cause is shown, all objections to the designation of documents as  
 10 Confidential Material must be interposed in writing, describing the challenged  
 11 documents by bates number, no later than 60 days before trial, or such objections shall  
 12 be deemed waived. Should the Parties be unable to resolve the dispute, the Party  
 13 opposing the inclusion of such material under this Protective Order, within thirty days  
 14 from receipt of the letter challenging the confidentiality of any documents, may apply to  
 15 the Court by motion for a ruling that the information should not be entitled to protection  
 16 under this Protective Order. The Party opposing such designation need only identify the  
 17 document in a simple motion in order for it to be subjected to Court review. The Party  
 18 designating the material as confidential shall have the burden of proving that said  
 19 material is subject to protection. Until such time as the Court rules on the motion, the  
 20 material that is the subject of the dispute shall continue to be subject to this Protective  
 21 Order. In no circumstance may challenges to designations of Confidential Material be  
 22 made after this case is finally determined as to the challenging party.  
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 26 14. The inadvertent production by any party in the course of discovery in  
 27 these proceedings of a document subject to a claim of privilege, work product, or other  
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1 statutory or court-ordered confidentiality, will not result in a waiver of any of the  
 2 foregoing protections, whether in these or any other proceedings  
 3 document or any other withheld document covering the same or similar subject matter.  
 4 Should any party challenge the assertion of privilege, the parties will follow the  
 5 procedure outlined in Paragraph 13.

7 15. Confidential Material shall be used (if otherwise relevant and admissible)  
 8 solely in this Action and any underlying case consolidated in this Court for discovery  
 9 purposes in accordance with the provisions of this Protective Order, and such  
 10 Confidential Material shall not be used in any other legal action or proceeding or for any  
 11 other purpose without further order of this Court.

13 16. Confidential Material may be provided to the Court in connection with  
 14 any pleading, motion, or other paper filed with the Court in this Action. The Party  
 15 providing such Confidential Material to the Court shall mark one of the legends set forth  
 16 in Paragraph 3 above on each page of the filing that contains such material. ~~Any~~  
 17 ~~pleading, motion, or other paper filed with the Court containing Confidential Material~~  
 18 ~~shall be filed with the Clerk of the Court under seal in an envelope marked with one of~~  
 19 ~~the legends set forth in Paragraph 3 above and bearing the caption of the case as required~~  
 20 ~~under any Order of this Court and title of the document, and a copy of such filing shall~~  
 21 ~~simultaneously be furnished under seal in a similarly labeled envelope marked "Judge's~~  
 22 ~~Copy," to the Court's chambers. Such papers filed under seal shall not be unsealed or~~  
 23 ~~made a part of the public record except by further order of this Court.~~

26 17. If during the course of document production it becomes known that certain  
 27 Confidential Material has been produced inadvertently, such as patient records for which  
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Not  
 approved.

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1 patient personal information was not redacted or medical records inadvertently produced  
2 for a different patient as well as attorney-client and/or attorney work product documents,  
3 such inadvertent production does not waive any privilege or claim of confidentiality that  
4 a Party may possess as to that Confidential Material. The Party who receives any  
5 Confidential Material shall notify the Party who produced those documents within  
6 fourteen days of first discovering such inadvertent disclosure. That Party shall also not  
7 make any reproductions of any form of those documents, and if any reproductions were  
8 made prior to discovery of the documents confidentiality, that Party shall return any  
9 copies along with the original to the producing Party. Under no circumstances shall any  
10 Party use information obtained through an inadvertent disclosure to its benefit or the  
11 producing Party's detriment. Further, any Party who discloses any information  
12 contained in inadvertently produced Confidential Material to any person not a Party to  
13 or covered under this Protective Order shall be deemed in violation of this Protective  
14 Order. A party may oppose the designation of documents as inadvertently produced,  
15 including any assertion of privilege in accordance with the procedure set up in  
16 Paragraph 13 above, except that the party opposing such designation must do so within  
17 30 days of being notified by the producing party of the inadvertent production.  
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21 If a producing Party discovers that it has inadvertently produced confidential  
22 documents to another Party, it shall within fourteen (14) days of such discovery ask for  
23 the return of such documents, including any copies, from the Party who inadvertently  
24 received any confidential document. Failing to make a timely request shall be deemed a  
25 waiver of any privilege or confidence as to those documents.  
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1           18.       The use in this litigation of a confidential document by the disclosing  
2 party shall not constitute a waiver of confidentiality. Other uses or disclosures of  
3 confidential documents may or may not create a waiver, depending on applicable law.  
4

5           19.       Upon written demand by a Party, to be made within thirty days after the  
6 final determination of this Action or all related actions, as defined previously, as to the  
7 party to whom the documents were produced and, for material not specific to a  
8 particular case, the final determination of any other action of which the same counsel is  
9 counsel of record for each Party receiving Confidential Material shall assemble and  
10 return all such material to the disclosing Party or, alternatively, shall immediately  
11 destroy all such material. All attorneys of record shall, within forty-five days of an  
12 initial written demand under this paragraph, certify that all Confidential Material,  
13 including any such material disclosed to any other entity, has been returned or  
14 destroyed. The sole exception to the requirements described above is that information  
15 that has been incorporated into attorney work product or other privileged documents  
16 need not be returned or destroyed. Such information shall be retained by the person to  
17 whom the information was produced, and shall be treated as Confidential Material in  
18 accordance with this Order.  
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21           20.       Each Party shall retain all rights and remedies available to it under the law  
22 for the enforcement of this order against anyone who violates it.

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21. The restrictions of this Protective Order shall continue to apply after this case is finally determined and the Court shall retain jurisdiction for all purposes in connection therewith.

DATED: January 20, 2012

Respectfully Submitted,

/s/ Mark R. Mueller  
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Attorneys for Plaintiff  
DATED: January 20, 2012

Respectfully Submitted,

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ORDER

IT IS SO ORDERED.

DATED this 30 day of January, 2012.

  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**

**THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DAVID SCHMIDT,

Plaintiff,

v.

C.R. BARD, INC.; DAVOL, INC.; AND  
JOHN DOE(S),

Defendants.

Civil Action No.: 2:11-cv-  
00978-PMP-PAL

**AGREEMENT TO MAINTAIN CONFIDENTIALITY**

The undersigned agrees:

I hereby attest to my understanding that information or documents designated confidential are provided to me subject to the Stipulated Protective Order dated \_\_\_\_\_, \_\_\_\_\_ (the "Protective Order"), in the above-captioned litigation; that I have been given a copy of and have read the Protective Order, and that I agree to be bound by its terms. I also understand that my execution of this Agreement to Maintain Confidentiality, indicating my agreement to be bound by the Protective Order is a prerequisite to my review of any information or documents designated as confidential pursuant to the Protective Order.

I further agree that I shall not disclose to others, except in accord with Protective Order, any Confidential Information, as defined therein, in any form whatsoever, and that such Confidential Information therein may be used only for the purposes authorized by the Protective Order.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such information will continue even after this litigation concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Protective Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court for the District of Nevada, for the purposes of any proceedings relating to enforcement of the Protective Order.

///

1 I further agree to be bound by and to comply with the terms of the Protective  
2 Order as soon as I sign this Agreement, whether or not the Protective Order has yet been  
3 signed by the Court.

4 Date: \_\_\_\_\_

5 By: \_\_\_\_\_

6  
7 Subscribed and sworn to before me this  
8 \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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11 Notary Public

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